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CVP Cost Allocation Study

3 messages

Joe Membrino <JMembrino@hallestill.com>

Thu, Aug 1, 2013 at 1:16 PM

To: "bmillrlevy@usbr.gov" <bmillrlevy@usbr.gov>

The Hoopa Valley Tribe has a vital interest in the process used to develop a new cost allocation for the Central Valley Project (CVP). As you may know, the construction and operation of the Trinity Division had a severe and adverse impact on the Tribe's fishery resources that the United States holds in trust.

The Tribe has made a preliminary review of the CVP Cost Allocation Study Draft Assumptions and Approach (Updated June 28, 2012) (Study) in the context of the provisos in section 2 of the 1955 Trinity Division Act, Pub. L. 84-386 and sections 3404(c)(2) and 3406(b)(23) of the Central Valley Project Improvement Act (CVPIA) Pub. L. 102-575 Title XXXIV.

The provisos in the 1955 Act require that: (1) all Trinity Division developed water needed for the preservation and propagation of fish and wildlife and (2) a separate, additional annual release of 50,000 acre-feet allocated to Humboldt County and downstream users take priority over Trinity River diversions by the Bureau of Reclamation to the Central Valley for integration physically and financially with the rest of the CVP.

Section 3406(b)(23) of the CVPIA expressly confirms the Secretary's obligation to restore and protect the trust fishery resources of the Hoopa Valley Tribe. To our knowledge, this is the only provision in all of Reclamation law that recites an explicit trust responsibility to an Indian tribe. Section 3406(b)(23) requires that the Secretary implement a fishery restoration program developed with the concurrence of the Hoopa Valley Tribe. The Tribe and the Secretary concurred in the Trinity River Mainstem Fishery Restoration Record of Decision (ROD) on December 19, 2000. The Tribe considers the ROD to be a modern treaty with the United States.

The last sentence of section 3406(b)(23) states:

Costs associated with implementation of this paragraph [essentially, the ROD] shall be reimbursable as operation and maintenance expenditures pursuant to existing law.

CVPIA Section 3404(c)(2) states:

Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all

existing, new, and renewed contracts in conformance with the requirements and goals of this title.

The Tribe views the contracting directive as requiring the Secretary to make the ROD costs an O&M obligation in CVP contracts as a condition to delivery of water. In 2007, at the request of Senator Dianne Feinstein, the Secretary in consultation with the Tribe quantified ROD funding in 2007 dollars at \$16.4 million annually through completion of the ROD construction program and \$11.0 million annually thereafter for so long as the Trinity Division diverted water to the Central Valley. In the Tribe's view, if payments for the ROD are not invoiced, received by the Treasury, and appropriated to implement the ROD according to its terms, then Trinity diversions need to be suspended for so long as that occurs. Can you confirm that O&M costs (costs of service) are among the costs included in the Cost Allocation Study, or is the study limited to capital costs?

The Study states on page 1 that it will employ the Separable Costs Remaining Benefits (SCRB) method for allocating costs. It describes the SCRБ as follows:

The SCRБ method is based on the justified investment for each authorized project purpose and is the smaller of either: (1) the benefits ascribed to the purpose; or (2) the cost of the most economical single purpose alternative project which generates the same benefits as the multipurpose project.

The Study identifies a number of project purposes, including Fish and Wildlife. As to Fish and Wildlife purposes, the June 28, 2012 document states:

FISH AND WILDLIFE

Benefits Analysis:

During the last attempt to update the CVP cost allocation study, U.S. Fish and Wildlife Service (FWS) did not participate in the study and provided a letter dated May 4, 1987, stating that "...it is probably inappropriate to assign any project costs to fish and wildlife purposes considering the negative impact that the CVP has had on fish and wildlife." Furthermore, the letter stated, "After fish and wildlife losses associated with the CVP have been compensated for, it will be appropriate to begin assigning enhancement benefits to fish and wildlife."

To date, the FWS has not responded to requests to participate in the current CVP cost allocation study. Reclamation staff will continue to pursue coordination opportunities throughout the duration of the effort, but it is unlikely that any analyses completed would result in assigned costs to the fish and wildlife purpose.

One way to look at the costs that need to be paid for fish and wildlife purposes, which should be assigned to the water and power contractors, is by the inverse of the analysis of flood control benefits on page 3 of the Study. There flood control benefits, which the Study calls "damages prevented" (emphasis added) are measured by "indexing historic damages prevented values forward 50 years." The Tribe believes that the damages caused to its

fishery by the Trinity Division should be indexed from no later than the date the dam closed and cut off 109 miles of spawning habitat above Lewiston and radically changed the dynamic equilibrium of the Trinity River below Lewiston Dam with devastating effects on habitat and the fish themselves.

Thus, the cost of restoration and the cost of making the Tribe whole for the damage to its fishery over the course of a half century—damages not prevented—should be assessed and collected from water and power contractors.

Finally, no use of water in the Trinity/Klamath basin under the two provisos of the 1955 Act should be considered a basis for the government to compensate water and power contracts for “loss” of that water to which they are not entitled in any event.

As the cost allocation effort progress, we look forward to discussing this matter further.

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Thu, Aug 1, 2013 at 3:01 PM

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FYI -- Joe Membrino, representing the Hoopa Valley Tribe, asked that I share this with the Leadership Team.

Thanks,
Brooke

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Brooke Miller-Levy

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Fri, Aug 2, 2013 at 9:20 AM

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Brooke:

Thank you for bringing this to our attention. The HVT has raised these issues on multiple occasions over the past several years. FMD & NCAO have briefed them on process of reimbursement of TRRP restoration costs several times.

Please address Mr. Membrino's question regarding application of the allocation to construction vs. O&M costs in formal correspondence. Also, please send Joe's email to records.

Thank you,
Katherine

Thanks,
Katherine

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